

December 16, 2014

Krista Whitman
Assistant County Counsel
Office of the Sacramento County Counsel
700 H Street, Rm. 2650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-14-186

Dear Ms. Whitman:

This letter responds to your request for advice on behalf of Phil Serna, a member of the Sacramento County Board of Supervisors, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ We are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code section 1090. Moreover, this letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. May Supervisor Serna participate in board decisions regarding a General Plan amendment that would move the Urban Services Boundary to allow development and change land use designations from “agricultural” to “urban reserve,” and related decisions regarding the Natomas Joint Vision Plan (“JVP”) area where he owns real property located 310 feet from the nearest boundary of the JVP area?

2. May Supervisor Serna participate in board decisions regarding a General Plan amendment that would move the Urban Policy Area (“UPA”) to allow development in the North Precinct area and related decisions where his property is located 1.4 miles from the nearest boundary of the North Precinct area?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSIONS

1. No. As discussed below, Supervisor Serna has a conflict of interest and may not make, participate in making, or influence the decisions concerning the JVP area generally. Moreover, when the item is called for at a noticed public meeting, Supervisor Serna must: (1) immediately prior to the discussion of the item, orally identify his economic interest involved in the decision as well as details of the economic interest, as discussed in Regulation 18702.5(b), on the record of the meeting; (2) recuse himself; and (3) leave the room for the duration of the discussion and/or vote on the item.

2. Yes. As discussed below, he will not have a conflict of interest provided that the decision is not inextricably interrelated to the decisions regarding the JVP area in which he has a conflict of interest.

FACTS

The County Board of Supervisors will be considering two General Plan amendments in connection with the JVP, which is a joint project of the city of Sacramento (the “City”) and the county of Sacramento (the “County”) for the development of a substantial portion of land in the Natomas Basin. The land use designation for the land located within the expanded Urban Services Boundary would be changed from agricultural to urban reserve. These decisions can be broken down into two categories: decisions that involve the entire JVP area, and decisions that apply particularly to the North Precinct area.

Approval of the first amendment, which would move the Urban Services Boundary, will require that decisions be made relating to the JVP area as a whole, including decisions to:

- Authorize the issuance of a Notice of Preparation to begin the environmental review process.
- Approve contracts with consultants to work on the project, including the EIR.
- Certify the EIR.
- Create a combining zone to facilitate the use of Transfer Development Rights
- Approve rezones.
- Approve a Master Plan.
- Approve a Habitat Conservation Plan.

The second amendment involves moving the Urban Policy Area for the purpose of developing the North Precinct area. Other decisions necessary to develop the North Precinct area include decisions to:

- Adopt a Master Plan.
- Create a Special Planning Area Zone that specifies certain types of urban land uses and will contain development standards and design guidelines.
- Approve funding and development agreements with the Landowners Group.
- Approve financing plans and other infrastructure plans.

- Endorse annexations and create new districts.²
- Specify changes to the Transportation Diagram for roads and changes to the Bicycle Master Plan.
- Conduct a water supply assessment and adopt a Water Supply Master Plan.

Supervisor Serna owns a home in which he resides that is located 310 feet from the nearest boundary of the JVP area and approximately 1.4 miles from the North Precinct area. Under the proposed General Plan amendments, his property would not be rezoned.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest.³ A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his or her economic interests. (Regulation 18700(a).) You have identified one interest that may result in a conflict of interest for Supervisor Serna -- ownership of his personal residence

Materiality

Recently revised Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a government decision on real property in which an official has a financial interest is material. As relevant to Supervisor Serna's facts, the financial effect will be material if the decision:

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

“(11): “Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property. . . . Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property.”

² You state that some of the new districts will be specific to the North Precinct only, but others may apply to the other precincts as well. It is not known at this time which districts will apply to the North Precinct.

³ When a public official who holds an office specified in Section 87200 (including county supervisors) has a conflict of interest in a decision noticed at a public meeting, he or she must: (1) immediately prior to the discussion of the item, orally identify each type of interest involved in the decision as well as details of the interest as discussed in Regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

“(12): “Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

Foreseeability

Regulation 18706(b) defines “reasonably foreseeable” as follows:

“A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.”

Thus, Supervisor Serna would have a conflict of interest if there is a “realistic possibility” that the subject decisions would have one of the material effects listed in subdivisions (a)(10), (a)(11) or (a)(12) of Regulation 18705.2 on his property.

Decisions involving the JVP area generally.

Regulation 18705.2(a)(11)

Because Supervisor Serna’s property is within 500 feet of the JVP area, subdivision (a)(11) of the regulation is applicable.

The decisions you have described contemplate the urbanization of a vast area of empty land by adding hundreds, if not thousands, of residential units and commercial development to serve the new residents. Obviously, such development could have an impact on the value of nearby property. Because Supervisor Serna’s property is located 310 feet from the nearest boundary of this land, the financial effects on his property from the decision are material unless we can establish that “there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact” on his property. We cannot contemplate a situation where we could find that there are sufficient facts to indicate that there will be no measureable financial impact from putting in a large scale development this proximate to Councilmember Serna’s real property. Accordingly, Supervisor Serna may not participate in board decisions involving the JVP area as a whole, including those decisions listed above, unless another exception, discussed below, applies.⁴

⁴ Because we have determined that the subject decisions will have a material effect on Supervisor Serna’s property under Regulation 18705.2(a)(11), it is not necessary to address the other materiality tests.

Decisions involving the North Precinct**Regulation 18705.2(a)(12)**

Regulation 18705.2(a)(12) provides a “catch-all” materiality test that applies a “reasonably prudent” standard where the effect of a government decision does not trigger the other tests. It provides that if the reasonably foreseeable financial effect of the government decision on the official’s real property “would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property,” the effect is material.

Supervisor Serna’s property is located 1.4 miles from the nearest boundary of the North Precinct area. Property bordering on this point of the boundary, located within the current Urban Policy Area, is developed as residential. There are two major highways, Interstate 5 and state Highway 99, as well as a major road, Elkhorn Boulevard, which divide the North Precinct area from Supervisor Serna’s property. Property located on the southwest side of Interstate 5, including his property, is fully developed residential. Based on the location of Supervisor Serna’s property and the buffer of the highways, a major road and houses between his property and the North Precinct, it does not appear to be reasonably foreseeable that decisions involving the North Precinct will have a material financial effect on Supervisor Serna’s real property.

Segmentation and Interrelated Decisions:

Generally, decisions are analyzed independently to determine if there will be a foreseeable material financial effect on an official’s financial interest. For example, we have advised that under certain circumstances, some large, complex decisions may be segmented into separate decisions so that even if an official has a disqualifying interest in one component of the series of decisions, he may still participate in other components in which he has no financial interest.⁵ (*Milich* Advice Letter, No. I-04-216; *Merkuloff* Advice Letter, No. I-90-542.) Regulation 18709 provides that for segmentation to be permitted, all of the following must apply:

“(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

“(2) The decision in which the official has a financial interest is segmented from the other decisions;

“(3) The decision in which the official has a financial interest is

⁵ However, certain decisions are too interrelated to be considered separately. In that event, a public official’s conflict of interest in one decision will be disqualifying for the other decision as well. Decisions are inextricably interrelated when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

“(4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.”

As applied to the facts you have provided, it would appear that decisions regarding the JVP as a whole would be made before the decisions involving the North Precinct. Assuming that is the case, Supervisor Serna would recuse himself (as explained above) from the JVP decisions and only after a final decision has been made without his participating can he participate in decisions regarding the North Precinct in which he does not have a conflict of interest.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl